

MEMORANDUM

TO: The Board of Environmental Protection

FROM: Mike Morse, Bureau of Land & Water Quality, Portland

RE: Consent Agreement for Town of Rome

DATE: July 21, 2011

Statute and Rule Reference: *The Mandatory Shoreland Zoning Act*, 38 M.R.S.A. §§ 435 -439

Location: Rome, Maine

Description: In the fall of 2009, Arthur Thompson, the Code Enforcement Officer for the Town of Rome, gave written permission to Mr. and Mrs. Rick Conant ("Conants") to remove what he concluded were unsafe trees on the Conants' lot on Great Pond. In total, 13 large pine trees and one large oak tree were removed from the property, creating an opening in the forest canopy greater than 250 square feet within 100 feet of the shoreline, and further created a cleared opening greater than 10,000 square feet or 25% of the lot area. Arthur Thompson did not require any trees to be replanted.

In November of 2009, Department staff inspected the Conants' property and concluded that the number of trees allowed to be removed by the Town of Rome Code Enforcement Officer was excessive. By allowing excessive clearing of trees and not requiring replanting of them, the Town of Rome is subject to enforcement action.

Environmental Issues: Removal of trees in excess of the shoreland zoning vegetation retention requirements can result in degradation of water quality. Trees and other vegetation in the buffer strip adjacent to a waterbody filter nutrients from rain and stormwater runoff before it flows to surface waters; prevent or reduce soil erosion by binding soils via extensive root systems; and provide habitat for many animal species, including small mammals and many song birds. A wooded buffer also maintains the natural beauty of our larger waterbodies, such as Great Pond.

Department Recommendation: The Department recommends acceptance of this Consent Agreement stipulating that the Town of Rome pay a monetary penalty of \$500.00, which has been paid. In addition, the Agreement stipulates that the town require a replanting plan from the Conants, which has been provided to the Department, ensure it is implemented, and then monitored for 5 years for survival. The penalty is based on the Department's policies reflecting the size and type of the violation, knowledge of the violator, and that the violation could have been avoided. The penalty also reflects the Town's acknowledgement of their error and their willingness to cooperate and comply with the requirements of the Agreement. It is also important to note that the Town has recently hired a new Code Enforcement Officer and that Arthur Thompson is no longer employed by the Town in this capacity.

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JOHN ELIAS BALDACCI
GOVERNOR

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

BETH NAGUSKY
ACTING COMMISSIONER

IN THE MATTER OF:

TOWN OF ROME)	ADMINISTRATIVE CONSENT
ROME, KENNEBEC COUNTY, MAINE)	AGREEMENT
MANDATORY SHORELAND ZONING ACT)	(38 M.R.S.A. § 435-449)

This Agreement by and among the Town of Rome ("Town"), the Maine Department of Environmental Protection ("Department"), and the Maine Office of the Attorney General is entered into pursuant to the laws concerning the Department's *Organization and Powers*, 38 M.R.S.A. § 347-A(1).

The parties agree as follows:

1. The Town of Rome, which maintains a town office at 8 Mercer Road, Rome, Maine 04963, is responsible for administering a zoning ordinance pursuant to the *Mandatory Shoreland Zoning Act*, 38 M.R.S.A. § 438-A, for all shoreland areas. Shoreland areas in the Town include all lands within 250 feet of great ponds, rivers, certain freshwater wetlands, and within 75 feet of certain streams. Great Pond, in the Town of Rome, is a great pond and the land adjacent to that water body is subject to vegetation clearing limitations as contained in the Shoreland Zoning Ordinance ("Ordinance") for the Town of Rome, as adopted on March 10, 2007.
2. Section 15(P)(2) of the Rome Ordinance states, in pertinent part, that within 100 feet, horizontal distance of a great pond a buffer strip of vegetation shall be preserved as follows:
 - A. There shall be no cleared opening greater than 250 square feet in the forest canopy (or other existing woody vegetation if a forested canopy is not present) as measured from the outer limits of the tree or shrub crown. However, a footpath not to exceed six (6) feet in width as measured between tree trunks and/or shrub stems is allowed provided that a cleared line of sight to the water through the buffer strip is not created.
 - B. In order to maintain a buffer strip of vegetation, when the removal of storm-damaged, diseased, unsafe, or dead trees results in the creation of cleared openings, these openings shall be replanted with native tree species unless existing new tree growth is present.
3. On October 22, 2009, Arthur Thompson, the Code Enforcement Officer for the Town of Rome, gave written permission to Mr. and Mrs. Rick Conant ("Conants") to remove what he concluded were unsafe trees on the Conants' lot at 16 South Crane Lane. In total, 13 large

TOWN OF ROME
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2010-095-L

) ADMINISTRATIVE CONSENT
) AGREEMENT
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)

pine trees and one large oak tree were removed from the property, creating an opening in the forest canopy greater than 250 square feet in the area within 100 feet of the shoreline, and further created a cleared opening greater than 10,000 square feet or 25% of the lot area within the shoreland zone. Tree bole diameters ranged from 14 inches to 36 inches. Mr. Thompson concluded that several trees were leaning enough to fall into the pond and tear the posts from under the camp. Others trees were allowed to be removed due to their leaning toward the buildings on the lot and were deemed a threat to the electric lines. He concluded that at least one was dead. Arthur Thompson did not require any trees to be replanted.

4. On November 9, 2009, Department staff inspected the property of the Conants after receiving a complaint regarding the cutting and concluded that the number of trees allowed to be removed by the Town of Rome Code Enforcement Officer was excessive. While two trees were determined to be unhealthy or dead, inspection of the tree stumps and logs remaining on-site indicated that numerous trees were healthy, and not imminently hazardous. Not all leaning trees are unsafe trees, and not all trees within striking distance of a structure are unsafe trees.
5. By permitting trees that are not unsafe, or a "hazard", to be removed in excess of the clearing standards and by allowing a cleared opening in the forest canopy of greater than 250 square feet within 100 feet of the shoreline, and greater than 10,000 square feet or 25% of the lot area within the shoreland zone without requiring the replanting of trees, the Town of Rome is subject to enforcement under the *Mandatory Shoreland Zoning Act*, 38 M.R.S.A. §§ 441(3)(A) and 443-A(3).
6. On February 3, 2010, the Department issued a Notice of Violation to the Town of Rome regarding the violation described in Paragraphs 4 and 5 of this Agreement in accordance with 38 M.R.S.A. § 347-A(1)(B).
7. The Department has regulatory authority over the activities described herein.
8. Pursuant to 38 M.R.S.A. §§ 341-D(6)(C) and 347-A(1)(A)(1), administrative consent agreements must be approved by the Board of Environmental Protection (the "Board") which is part of the Department.
9. This Agreement shall become effective only if it is approved by the Board and the Office of the Attorney General.
10. To resolve the violation referred to in Paragraphs 4 and 5 of this Agreement, the Town of Rome agrees to:
 - A. No later than December 30, 2010, require the submission of a replanting plan from the Conants to replace the trees that were removed in the fall of 2009. The plan shall be prepared by a licensed Maine Forester or licensed arborist and include a schedule for all plantings to be completed. Trees shall be replanted on no less than a one-for-one basis,

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)

and shall be no less than ten feet in height, except outside the 100-foot setback area, where tree heights shall be no less than six feet. Planted trees shall be consistent with the species removed and shall be planted in or near the vicinity (within five (5) feet) of the stumps of those trees that have been removed, unless an alternate location is approved by the Department. The Town will monitor the plantings yearly, and any trees planted that do not survive a period of five years shall be replaced by the Conants.

- B. Within 5 days receipt of the replanting plan, submit a copy of the replanting plan to the Department for review and approval before implementation by the Conants.
 - C. Require Code Enforcement Officer Arthur Thompson to attend the training pertaining to "Hazard Tree Identification" sponsored by the State Planning Office's *Code Enforcement Officer Certification and Training Program* at the next offering of such training. Until such time as training is attended, Mr. Thompson will notify the Department prior to granting approval to remove more than two hazard trees within the water setback area on any lot in the shoreland zone.
 - D. Pay to the Treasurer, State of Maine, upon demand by the Department, the sum of one hundred dollars (\$100.00) per day per violation for the violation of any provision of this Agreement.
 - E. Pay the Treasurer, State of Maine, upon signing this Agreement, the sum of Five Hundred dollars (\$500.00) as a civil monetary penalty.
11. The Department and the Office of the Attorney General grant the Town of Rome a release of their causes of action against Town of Rome for the specific violations listed in Paragraphs 4 and 5 of this Agreement on the express condition that prior to approval of this Agreement by the Board, the Town of Rome demonstrates the authorization or ratification of this Agreement by the Board of Selectmen and that all actions listed in Paragraph 10 of this Agreement are completed in accordance with the express terms and conditions of this Agreement. The release shall not become effective until this condition is satisfied.

IN WITNESS WHEREOF the parties hereto have executed this Agreement consisting of four (4) pages.

TOWN OF ROME

BY: Robert Moreau Sr.
 ROBERT MOREAU, SR., SELECTMAN

DATE: 11-1-2010

BY: Paul Anderson
 PAUL ANDERSON, SELECTMAN

DATE: 11/8/2010

IN THE MATTER OF:

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AGREEMENT
(38 M.R.S.A. § 347-A)

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BY: Kelly Archer
KELLY ARCHER, SELECTMAN

DATE: 11/1/10

BOARD OF ENVIRONMENTAL PROTECTION

BY: _____
SUSAN M. LESSARD, CHAIR

DATE: _____

MAINE OFFICE OF THE ATTORNEY GENERAL

BY: _____
NANCY MACIROWSKI, ASSISTANT ATTORNEY GENERAL

DATE: _____

CA Abstract:

Town of Rome, Rome - (SLZ): In the fall of 2009, the Code Enforcement Officer for the Town of Rome gave permission to lot owners on Great Pond to remove what he concluded were unsafe trees. In total, 13 large pine trees and one large oak tree were removed from the property, creating an opening in the forest canopy greater than 250 square feet within 100 feet of the shoreline, and further created a cleared opening greater than 10,000 square feet or 25% of the lot area. Arthur Thompson did not require any trees to be replanted. By allowing cutting beyond the thresholds stated above and not requiring replanting, the town violated the Mandatory Shoreland Zoning Act. The Agreement required the town to obtain a replanting plan from the lot owners, see that it is implemented and then monitor the plantings for 5 years. The Agreement also stipulated a \$500.00 penalty which has been paid.
(Mike Morse)

CONSENT AGREEMENT

WHEREAS, RICK CONANT and MONICA CONANT (individually or collectively, hereinafter, "the Conants"), own certain real estate at 16 South Crane Lane in the Town of Rome, County of Franklin, State of Maine, described in the deed recorded in the Kennebec County Registry of Deeds in Book 8546, Page 262, and shown on Town of Rome Tax Map 24, Lot 10 (hereinafter "the Property"); and

WHEREAS, the Town of Rome has a Shoreland Zoning Ordinance last amended on March 10, 2007; (hereinafter "Ordinance");

WHEREAS, some time in October 2009 the Conants cut and removed large trees within the shoreland zone;

WHEREAS, the removal of any trees that were not storm-damaged, diseased, unsafe or dead, that created a cleared opening exceeding 25% of the lot area in the shoreland zone or 10,000 square feet, whichever is greater, would have been a violation of Section 15(P)(3)12 of the Town's Shoreland Zoning Ordinance ("Ordinance");

WHEREAS, the removal of any trees that were storm-damaged, diseased, unsafe or dead, obligated the Conants to replant such trees with native trees to avoid a violation of Section 15(P)(2)(e) of the Ordinance;

WHEREAS, the Town of Rome by its duly-elected town officials (hereinafter, "Town") has notified the Conants that, in the officials' judgment, the Conants have violated the Ordinance;

WHEREAS, the Conants claim that they acted with the prior approval of the Town's Code Enforcement Officer;

WHEREAS, the Conants have not yet replanted the trees cut and removed, or prepared and implemented a replanting and maintenance plan to restore the cleared areas;

WHEREAS, the Town claims that the Conants' cutting of the trees and failure to replace them has violated the Ordinance's standards for "Clearing or Removal of Vegetation for Activities Other Than Timber Harvesting"; and

WHEREAS, the Town and the Conants have reached an interim, out-of-court agreement regarding the alleged violations;

NOW THEREFORE: the Town and the Conants enter into this Interim Consent Agreement ("Agreement"), as follows:

1. The Conants will plant 6 ten-foot trees replacing the 6 trees that were cut by the Conants within 100 feet of the water and

- 8, six-foot trees replacing the 8 trees that were cut between 100 feet and the back of the lot.
2. Each new tree will be planted within 5 feet of the stump of the tree it is replacing.
3. Each replacement tree will be the same species as the tree it is replacing, meaning that there will be 10 pines and 4 oaks.
4. Any tree dying within 5 years of its planting shall be replaced with a tree of the same size as the deceased tree and of the same species as the deceased tree.
5. The planting will be completed before June 10, 2011.
6. The sketch attached as Exhibit 1 to this Agreement shows the locations of the 6 trees removed within 100 feet of the water. The Conants will provide the Town a similar sketch showing the locations of each of the 14 removed trees and 14 replacement trees.
7. Nothing in this Agreement shall be deemed a limitation, waiver or release of the Town's right at any time to pursue any right or remedy described in the Ordinance or 30-A M.R.S.A. §4452 if the Conants fail to meet one or more of their obligations under this Agreement.
8. This Agreement shall be specifically enforceable by the Town and, if the Conants fail to perform the work by the deadlines herein or to meet one or more of their obligations hereunder, the Town may exercise any contract right or remedy available at law or in equity, and the Town shall be entitled to collect its reasonable attorney's fees and all costs incurred in enforcing this Agreement.

IN WITNESS WHEREOF, said Conants have hereunto set their hands and seals below, the effective date of this Agreement being the 2nd day of May, 2011.

SEEN AND AGREED TO BY:

Rick Conant

RICK CONANT

Monica Conant

MONICA CONANT

STATE OF MAINE
Kennebec, ss.

May 2, 2011

Then personally appeared before me the above-named **RICK CONANT** and acknowledged the foregoing instrument to be his free act and deed.

Shannon J Holt
NOTARY PUBLIC
Name: Shannon J Holt
Commission expires: 05/05/2016

(seal)

STATE OF MAINE
Kennebec, ss.

May 2, 2011

Then personally appeared before me the above-named **MONICA CONANT** and acknowledged the foregoing instrument to be her free act and deed.

Shannon J Holt
NOTARY PUBLIC
Name: Shannon J Holt
Commission expires: 05/05/2016

(seal)

ACCEPTED BY:

TOWN OF ROME
By: its Selectmen

Kelly Archer
Larry A. Reed
Paul J. Brown

STATE OF MAINE
Kennebec, ss.

May 2, 2011

Personally appeared before me the above-named Kelly Archer in his capacity as Selectman of the TOWN OF ROME, and acknowledged the foregoing to be his free act and deed in his said capacity, duly authorized, and the free act and deed of the TOWN OF ROME.

Shannon J Holt
NOTARY PUBLIC
Name: Shannon J Holt
Commission expires: 05/05/2016

(seal)

Civil/Consent Agreement, Shoreland Ordinance

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